

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

James Anthony Davis,
 Plaintiff,
 v.
 Transunion Corp.,
 Defendant.

Case No.: 2:14-cv-607-JAD-VCF

Order Remanding Case

Pro se plaintiff James Anthony Davis sued defendant Transunion Corp. in Nevada state court, alleging a cause of action under 42 U.S.C. § 1983 as well several undefined claims under Nevada state law. *See* Doc. 1 at 15-26. Defendant removed the case to federal court, and on September 2, 2014, I granted its motion to dismiss plaintiff's § 1983 claim, leaving no viable federal claims pending. Doc. 15 at 5. I also granted plaintiff 30 days to file an amended complaint to plead a viable federal claim. Doc. 15 at 5. I cautioned plaintiff that if he "fal[ed] to prosecuted this action, or if he fail[ed] to comply with the rules or any court order, the court may dismiss the action with prejudice under Rule 41(b) of the Federal Rules of Civil Procedure." *Id.* More than three months have passed since I issued my order, and plaintiff has failed to file an amended complaint or otherwise prosecute this action.

Under Rule 41(b), "If the plaintiff fails to prosecute or comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the order states otherwise, a dismissal under this subdivision . . . operates as an adjudication on the merits."¹ Rule 41(b) of the Federal Rules of Civil Procedure permits a district court to dismiss an action *sua sponte* for failure to prosecute.² "In determining whether to dismiss a claim for

¹ Fed. R. Civ. Proc. 41(b). Such a dismissal does not operate as an adjudication on the merits in several circumstances, none of which are applicable here. *See id.*

² *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (recognizing that a court "may act sua sponte to dismiss a suit for failure to prosecute"); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) ("courts may dismiss under Rule 41(b) sua sponte, at least under certain circumstances").

1 failure to prosecute or failure to comply with a court order, the Court must weigh the
2 following factors: (1) the public's interest in expeditious resolution of litigation; (2) the
3 court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the
4 availability of less drastic alternatives; and (5) the public policy favoring disposition of cases
5 on their merits.”³

6 Consideration of all five factors in this case favors dismissal of Davis's federal claim
7 with prejudice. The first two factors favor dismissal because I have waited more than three
8 months for any response from plaintiff, but he has yet to file an amended complaint or
9 otherwise prosecute his federal claims. I note that there is no risk to the defendants, whose
10 motion to dismiss was previously granted; and I have already explored the less drastic
11 alternatives by permitting plaintiff leave to amend his complaint. Finally, in previously
12 ruling on the motion to dismiss, I effectively disposed of this case on its merits and merely
13 permitted plaintiff one more chance to plead viable claims.

14 In my order, I noted that after dismissing plaintiff's 42 U.S.C. § 1983 claim—the sole
15 federal claim he brought—I did “not reach the question whether [I] would exercise
16 supplemental jurisdiction over his undefined state law claims” under 28 U.S.C. § 1367(c).
17 Doc. 5 at 4 n.15. When a case has been removed from state court and all federal claims have
18 been dismissed, the district court has discretion to retain the remaining state law claims, or
19 remand them to state court.⁴ I find that the state law claims now substantially predominate
20 over any federal claim because I have dismissed any claim over which this court had original
21 jurisdiction. 28 U.S.C. § 1367(c). I thus decline to exercise supplemental jurisdiction over
22 Davis's remaining claims under 28 U.S.C. § 1367(c) and I remand the remainder of this case
23 back to state court. 28 U.S.C. § 1447(c).

24 Accordingly, it is **HEREBY ORDERED** that Davis's federal claims are dismissed
25

26 ³ *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258,
27 1260 (9th Cir. 1992)).

28 ⁴ *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 172 (1997); *United Mine Workers of
Am. v. Gibbs*, 383 U.S. 715, 726 (1966).

1 with prejudice, and Davis's undefined state law claims are remanded back to the Eighth
2 Judicial District Court, Clark County, Nevada (Case No. A-14-697558-C). The clerk of
3 court is instructed to enter judgment accordingly and close this case.

4 DATED: December 8, 2014.

5
6 
Jennifer A. Dorsey
United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28